

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

STEVEN MACK McGEE, #01060814	§	
VS.	§	CIVIL ACTION NO. 2:20cv026
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Steven Mack McGee, a prisoner confined at the Huntsville Unit within the Texas Department of Criminal Justice (TDCJ) proceeding *pro se*, filed this petition for a writ of habeas corpus pursuant to § 2254 challenging his Harrison County, Texas, conviction. The petition was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On January 17, 2023, Judge Payne issued a Report, (Dkt. #33), recommending that Petitioner's habeas petition be denied, and that the case be dismissed with prejudice. Judge Payne further recommended that Petitioner be denied a certificate of appealability *sua sponte*. A copy of this Report was sent to Petitioner at his address, with an acknowledgment card. Petitioner filed timely objections, (Dkt. #34).

Petitioner's objections are without merit. He identifies no error in the Magistrate Judge's Report. Petitioner's habeas petition is untimely. *See Starns v. Andrews*, 524 F.3d 612, 618 (5th Cir. 2008) (explaining that the relevant question in determining due diligence is "whether the petitioner should be expected to take actions which would lead him to the information.") (quoting *Wilson v. Beard*, 426 F.3d 653, 662 (3d Cir. 2005)). Moreover, Petitioner does not address that his stamped judgment and sentence reveal that pursuant to his agreement, his sentences were to run

consecutively—with the twenty-year sentence commencing only after Petitioner completed his fifteen-year sentence for Count I, (Dkt. #20, pg. 57-58)—as identified by the Magistrate Judge. He is not entitled to equitable tolling.

The Court has conducted a careful *de novo* review of the record and the Magistrate Judge’s proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner’s objections are without merit. Accordingly, it is

ORDERED that the Report and Recommendation of the United States Magistrate Judge, (Dkt. #33), is **ADOPTED** as the opinion of the Court. Petitioner’s objections, (Dkt. #34), are **OVERRULED**. It is also

ORDERED that Petitioner’s habeas petition is **DENIED** and the above-styled civil action is **DISMISSED**, with prejudice, as time-barred. Petitioner is further **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are **DENIED**.

So ORDERED and SIGNED this 6th day of February, 2023.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE